

1
2
3
4
5
6
7
8
9
10
11
12

**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

CITY OF LIBERTY LAKE, WASHINGTON, a
municipal corporation,

Petitioner,

v.

CITY OF SPOKANE VALLEY, WASHINGTON,
a municipal corporation,

Respondent.

Case No. 03-1-0009

MEMORANDUM DECISION ON
PETITIONER'S DISPOSITIVE
MOTION

13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. BACKGROUND

On December 23, 2003, CITY OF LIBERTY LAKE, by and through their attorney, BRIAN MCGINN, filed a Petition for Review.

On January 21, 2004, the Board held a Prehearing conference. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner was Brian McGinn. Present for Respondent was Cary Driskell.

On January 23, 2004, the Board issued its Prehearing Order and Order on Respondent's Motion to Supplement the Record.

On February 11, 2004, Petitioner filed its Motion to Supplement the Record and to Strike, Petitioner's Dispositive Motion and Memorandum of Law in Support of Dispositive Motion.

On February 25, 2004, Respondent filed its Response to Petitioner's Motion to Supplement the Record and Strike Portion of Record, and Memorandum in Opposition to Liberty Lake's Dispositive Motion.

On March 3, 2004, Petitioners filed their Reply in Support of Dispositive Motion and Petitioner's Reply Memorandum Regarding Motion to Supplement the Record and Strike.

1 On March 10, 2004, the Board held a telephonic Motion Hearing. Present were D.E.
2 "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo.
3 Present for Petitioner was Brian McGinn. Present for Respondent was Cary Driskell.

4 On December 23, 2003, Petitioner, City of Liberty Lake requested review by this
5 Board of actions taken by the City of Spokane Valley amending its Interim Comprehensive
6 Plan.

7 The petition alleged City of Spokane Valley failed to comply with the requirements of
8 the GMA to provide 60 days notice to CTED of its proposed action, failure to provide
9 adequate public participation, amending its comprehensive plan more frequently than once
10 per year, did not do a SEPA review, and did not consider the impact of the amendment on
11 public services of facilities.

12 On February 11, 2004, Petitioners filed a dispositive motion with the Board, and
13 presented arguments that the failure to notify CTED of the pending amendment was
14 uncontestable, and grounds alone for a find of non-compliance and a remand to the City of
15 Spokane Valley. Liberty Lake's argument focused on Wildlife Habitat Injustice Prevention, et
al., v. City of Covington, CPSGMHB, 00-3-0012, for support of its position.

16 The City of Spokane Valley argued in response that actions amending the interim
17 comprehensive plan are governed only by RCW 35A.63, and are not subject to RCW
18 36.70A. Spokane Valley argued that notice to CTED was not a requirement, and that RCW
19 36.70A does not apply to a newly incorporated city until passage of its final comprehensive
20 plan. The City of Spokane Valley stated the law allowed them up to four years to
21 accomplish that task.

22 After considering the arguments of the parties, the Board rules in favor of the
23 Petitioner on the dispositive motion. The Board finds the Wildlife et al v. Covington case
24 directly applicable, and concurs with the ruling of the CPSGMHB.

25 The Board is convinced the action of the City of Spokane Valley in amending its
26 comprehensive plan is clearly erroneous.

1 The Board directs Petitioner's counsel to draft an order for our consideration
2 reflecting the decision in this Memorandum by no later than March 17, 2004.

3 The Board also considered motions by Petitioner to supplement the record and to
4 strike a newspaper article from the record. Those motions were granted.

5 The Board considered a motion during the motions hearing made by Respondent,
6 City of Spokane Valley to strike portions of Petitioners reply brief. This motion was denied.

7 The Board directs counsel for Petitioner to incorporate these rulings within the draft
8 Order on Motions for the Board's consideration.

SO ORDERED this ____ day of March 2004.

9 EASTERN WASHINGTON GROWTH MANAGEMENT
10 HEARINGS BOARD

11
12 _____
D.E. "Skip" Chilberg, Board Member

13
14 _____
Dennis Dellwo, Board Member

15
16 _____
Judy Wall, Board Member